

FRANK J. RUBINO
Corporation Counsel
Attorney for Defendants City of Yonkers
and Yonkers Police Department
City Hall, Room 300
Yonkers, New York 10701
(914) 377-6237
By: Michael Levinson
Associate Corporation Counsel (ML 3968)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANEITA HENRY-LEE, individually and as the
ADMINISTRATRIX of the Goods, Chattels and Credits
of PETER C.A. LEE, deceased,

Plaintiffs,
-against-

VERIFIED ANSWER

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, POLICE OFFICER JOHN BAUMEISTER
(Shield # 24846), POLICE OFFICER MICHAEL INGRAM
(Shield # 1727), KEVIN ROUGHNEEN (Shield # 2942),
JOHN DOE 1-10 (the fictitious names of persons yet to be
identified), JMR REST CORP., d/b/a/ RORY DOLANS
RESTAURANT BAR, CITY OF YONKERS and YONKERS
POLICE DEPARTMENT

Index No. 08 CV 0089 (DC)

Defendants.
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Defendants, CITY OF YONKERS and YONKERS POLICE DEPARTMENT,
answering the Verified Complaint herein, by FRANK J. RUBINO, Corporation Counsel
of the City of Yonkers, its attorney:

FIRST: Denies knowledge or information sufficient to form a belief as to the
truth of any of the allegations set forth in the paragraphs designated "1", "2", "3", "4",
"5", "6", "7", "8", "9", "10", "13", "14", "17", "18", "19", "20", "21", "22", "23", "24",

“25”, “26”, “27”, “28”, “29”, “30”, “31”, “32”, “33”, “34”, “35”, “37”, “38”, “40”, “41”, “42”, “43”, “45”, “46”, “47”, “51” and “52” of the Verified Complaint.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “11” of the Verified Complaint, except admit the defendant City of Yonkers was and is a municipal corporation and respectfully refers all questions of law to the Court.

THIRD: Denies upon information and belief, each and every allegation set forth in paragraphs designated “36” and “39” Verified Complaint.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated “48”, “49”, “50” and “55” of the Verified Complaint and respectfully refers all questions of law to the Court.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “53” of the Verified Complaint, except admits that a paper writing purporting to be a notice of claim was received in the Office of the Corporation Counsel of the City of Yonkers; that more than thirty (30) days have elapsed since the presentation of said notice and that the claim has not been adjusted and respectfully refers all questions of law to the Court.

SIXTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated “56” of the Verified Complaint, except admit receipt of documents entitled summons and verified complaint within two (2) years after the date of alleged occurrence.

ANSWERING THE FIRST CAUSE OF ACTION

SEVENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "57" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "58", "59", "60", "61", "62", "63", "64", "65", "66", "67", "68", "69", "70", "71", "72", "73", "74", "75", "77", "78", "79", "80", "82", "83" and "84" of the Verified Complaint.

NINTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "76" and "81" as to the New York City Police Department and denies upon information and belief, each and every allegation as to Yonkers Police Department.

TENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "85", "86" and "87" of the Verified Complaint.

ANSWERING THE SECOND CAUSE OF ACTION

ELEVENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "88" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

TWELFTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "89", "90", "91", "92" and "93" of the Verified Complaint.

THIRTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "94", "95" and "96" of the Verified Complaint.

ANSWERING THE THIRD CAUSE OF ACTION

FOURTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "97" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

FIFTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "98", "99", "100", "101", "102", "103", "104", "105", "106" and "107" of the Verified Complaint.

SIXTEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "108", "109" and "110" of the Verified Complaint.

ANSWERING THE FOURTH CAUSE OF ACTION

SEVENTEENTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "111" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

EIGHTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "112", "113", "114", "115", "116", "117", "118", "119", "120", "121", "122", "123", "124", "125" and "126" of the Verified Complaint.

NINETEENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "127", "128" and "129" of the Verified Complaint.

ANSWERING THE FIFTH CAUSE OF ACTION

TWENTIETH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “130” of the Verified Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-FIRST: Denies upon information and belief, each and every allegation set forth in paragraphs designated “131”, “138”, “139” and “140” of the Verified Complaint.

TWENTY-SECOND: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated “132”, “133”, “134”, “135”, “136” and “137” of the Verified Complaint.

ANSWERING THE SIXTH CAUSE OF ACTION

TWENTY-THIRD: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated “141” of the Verified Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated “142”, “143”, “144”, “145”, “146”, “147” and “148” of the Verified Complaint.

TWENTY-FIFTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated “149”, “150” and “151” of the Verified Complaint.

ANSWERING THE SEVENTH CAUSE OF ACTION

TWENTY-SIXTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "152" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

TWENTY-SEVENTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "153", "154", "155", "156", "157", "158", "159", "160", "161", "162", "163", "164", "165", "166" and "167" of the Verified Complaint.

TWENTY-EIGHTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "168", "169" and "170" of the Verified Complaint.

ANSWERING THE EIGHTH CAUSE OF ACTION

TWENTY-NINTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "171" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

THIRTIETH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "173", "174", "175", "176", "177", "178" and "179" of the Verified Complaint.

THIRTY-FIRST: Denies upon information and belief, each and every allegation set forth in paragraphs designated "180", "181" and "182" of the Verified Complaint.

ANSWERING THE NINTH CAUSE OF ACTION

THIRTY-SECOND: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "183" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

THIRTY-THIRD: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "184", "185", "186", "187", "190" and "192" of the Verified Complaint.

THIRTY-FOURTH: Denies upon information and belief, each and every allegation set forth in paragraph designated "188" of the Verified Complaint and respectfully refers all questions of law to the Court.

THIRTY-FIFTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "189", "191", "193", "194" and "195" of the Verified Complaint.

ANSWERING THE TENTH CAUSE OF ACTION

THIRTY-SIXTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "196" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

THIRTY-SEVENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "197", "198", "199", "202", "203" and "204" of the Verified Complaint.

THIRTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "200" and "201" of the Verified Complaint.

ANSWERING THE ELEVENTH CAUSE OF ACTION

THIRTY-NINTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "205" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

FORTIETH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "206", "207" and "208" as to presence of police officers from the Yonkers Police Department.

FORTY-FIRST: Denies upon information and belief, each and every allegation set forth in paragraphs designated "209", "210", "215", "217", "221", "222" and "223" of the Verified Complaint.

FORTY-SECOND: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "211", "212", "213", "214", "216", "218", "219" and "220" of the Verified Complaint.

ANSWERING THE TWELFTH CAUSE OF ACTION

FORTY-THIRD: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "224" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

FORTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "225", "226", "227", "228", "229", "230", "231", "232", "233", "234" and "235" of the Verified Complaint.

FORTY-FIFTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "236", "237", "238" and "239" of the Verified Complaint.

ANSWERING THE THIRTEENTH CAUSE OF ACTION

FORTY-SIXTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "240" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

FORTY-SEVENTH: Denies upon information and belief, each and every allegation set forth in paragraph designated "241", "242", "243", "244", "245", "246", "247", "248", "249" and "250" of the Verified Complaint.

ANSWERING THE FOURTEENTH CAUSE OF ACTION

FORTY-EIGHTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "251" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

FORTY-NINTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "252" and "253" of the Verified Complaint and respectfully refers all questions of law to the Court.

FIFTIETH: Denies upon information and belief, each and every allegation set forth in paragraph designated "254" of the Verified Complaint and respectfully refers all questions of law to the Court.

FIFTY-FIRST: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "255", "256" and "257" of the Verified Complaint.

FIFTY-SECOND: Denies upon information and belief, each and every allegation set forth in paragraphs designated "258", "259" and "260" of the Verified Complaint.

ANSWERING THE FIFTEENTH CAUSE OF ACTION

FIFTY-THIRD: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "261" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

FIFTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "262", "263", "264", "265", "266", "267", "268", "269", "270", "271" and "272" of the Verified Complaint.

FIFTY-FIFTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "273", "274" and "275" of the Verified Complaint.

ANSWERING THE SIXTEENTH CAUSE OF ACTION

FIFTY-SIXTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph

designated "276" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

FIFTY-SEVENTH: Denies upon information and belief, each and every allegation set forth in paragraphs designated "277", "279" and "280" of the Verified Complaint.

FIFTY-EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraph designated "278" of the Verified Complaint.

ANSWERING THE SEVENTEENTH CAUSE OF ACTION

FIFTY-NINTH: Defendants repeat and reiterate each and every admission and denial heretofore interposed with respect to the paragraph re-alleged in the paragraph designated "281" of the Verified Complaint with the same force and effect as though fully set forth herein at length.

SIXTIETH: Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in the paragraphs designated "282" and "283" of the Verified Complaint.

SIXTY-FIRST: Denies upon information and belief, each and every allegation set forth in paragraphs designated "284", "285", "286" and "289" of the Verified Complaint.

SIXTY-SECOND: Denies upon information and belief, each and every allegation set forth in paragraphs designated "287" and "288" of the Verified Complaint and respectfully refers all questions of law to the Court.

SIXTY-THIRD: Denies upon information and belief, each and every allegation set forth in the "WHEREFORE" section of the Verified Complaint.

AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO PLAINTIFF'S VERIFIED COMPLAINT, THE DEFENDANTS, ALLEGE UPON INFORMATION AND BELIEF:

SIXTY-FOURTH: The Plaintiff decedent Peter C. A. Lee was guilty of negligence and culpable conduct which wholly and totally caused the injuries and damages alleged in the Plaintiff's Verified Complaint, without any negligence or culpable conduct, active or passive, on the part of the Defendants, CITY OF YONKERS and YONKERS POLICE DEPARTMENT, contributing thereto.

AS AND FOR A SECOND, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO PLAINTIFF'S VERIFIED COMPLAINT, THE DEFENDANTS, ALLEGE UPON INFORMATION AND BELIEF:

SIXTY-FIFTH: That the injuries and damages alleged in the Verified Complaint were caused in whole or in part by the culpable conduct and/or negligence of plaintiff decedent and these defendants are entitled to judgment assessing and fixing the culpable conduct of plaintiff decedent contributing to said injuries and damages in proportion to plaintiff decedent's culpable conduct as determined at trial.

AS AND FOR A THIRD, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO PLAINTIFF'S VERIFIED COMPLAINT, THE DEFENDANTS, ALLEGE UPON INFORMATION AND BELIEF:

SIXTY-SIXTH: Defendants were acting within the scope of their governmental functions and duties and are entitled to qualified and sovereign immunity.

AS AND FOR A FOURTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO PLAINTIFF'S VERIFIED COMPLAINT, THE DEFENDANTS, ALLEGE UPON INFORMATION AND BELIEF:

SIXTY-SEVENTH: That the Verified complaint fails to allege sufficient facts to state any cause of action.

AS AND FOR A FIFTH, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE TO PLAINTIFF'S VERIFIED COMPLAINT, THE DEFENDANTS, ALLEGE UPON INFORMATION AND BELIEF:

SIXTY-EIGHTH: Any liability and/or recovery against these defendants shall be limited pursuant to the provisions of Article 16 of the CPLR.

AS AND FOR A CROSS-CLAIM AGAINST THE DEFENDANTS, THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, POLICE OFFICER JOHN BAUMEISTER (Shield # 24846), POLICE OFFICER MICHAEL INGRAM (Shield # 1727), KEVIN ROUGHNEEN (Shield # 2942), JOHN DOE 1-10 (the fictitious names of persons yet to be identified) and JMR REST CORP., d/b/a/ RORY DOLANS RESTAURANT BAR, THE DEFENDANT, CITY OF YONKERS, ALLEGES UPON INFORMATION AND BELIEF:

SIXTY-NINTH: That if the Plaintiff decedent Peter C. A. Lee, was caused to sustain damages, as alleged in the Verified complaint, through any negligence other than the Plaintiff decedent Peter C. A. Lee's own negligence and if the Defendant, CITY OF YONKERS, is held liable to the plaintiff herein by operation of law or otherwise, then this answering Defendant is entitled to judgment over against the Defendants, THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, POLICE OFFICER JOHN BAUMEISTER (Shield # 24846), POLICE OFFICER MICHAEL INGRAM (Shield # 1727), KEVIN ROUGHNEEN (Shield # 2942), JOHN DOE 1-10 (the fictitious names of persons yet to be identified) and JMR REST CORP., d/b/a/ RORY DOLANS RESTAURANT BAR, for the entire amount of Plaintiff's recovery or

for that portion of said recovery caused by the negligence or carelessness of the Defendants, THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, POLICE OFFICER JOHN BAUMEISTER (Shield # 24846), POLICE OFFICER MICHAEL INGRAM (Shield # 1727), KEVIN ROUGHNEEN (Shield # 2942), JOHN DOE 1-10 (the fictitious names of persons yet to be identified) and JMR REST CORP., d/b/a/ RORY DOLANS RESTAURANT BAR, together with the costs and expenses, including attorney's fees, incurred by the answering Defendant in the defense of this action.

WHEREFORE, the Defendant, CITY OF YONKERS, demands judgment dismissing the Verified Complaint herein with costs and disbursements and moreover, demands that the ultimate rights of the Defendants as between themselves be determined in this action and that the Defendant, CITY OF YONKERS, have judgment over against the Defendants, THE CITY OF NEW YORK, NEW YORK CITY POLICE DEPARTMENT, POLICE OFFICER JOHN BAUMEISTER (Shield # 24846), POLICE OFFICER MICHAEL INGRAM (Shield # 1727), KEVIN ROUGHNEEN (Shield # 2942), JOHN DOE 1-10 (the fictitious names of persons yet to be identified) and JMR REST CORP., d/b/a/ RORY DOLANS RESTAURANT BAR, for all or portion of any verdict or judgment which may be obtained by the Plaintiff herein against the Defendant, CITY OF YONKERS, together with the costs and disbursements of this action, including attorney's fees.

Dated: Yonkers, New York
January 30, 2007

FRANK J. RUBINO
Corporation Counsel
Attorney for Defendants
City of Yonkers and Yonkers Police Dept.
City Hall, Room 300
Yonkers, New York 10701
(914) 377-6237



By: Michael Levinson
Associate Corporation Counsel (ML 3968)

CERTIFICATE OF SERVICE

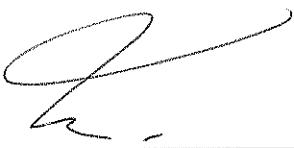
I hereby certify that on January 30, 2008 I caused a true and correct copy of the foregoing Defendants' Answer to be served by mail upon:

The Adam Law Office, P.C.
Attorneys for Plaintiffs
275 Madison Avenue – Suite 110
New York, New York 10016

Corporation Counsel for the City of New York
100 Church Street
New York, New York 10007

JMR Rest Corp.
890 McLean Avenue
Yonkers, New York 10704

Dated: Yonkers, New York
January 30, 2008



Michael Levinson, Esq. (ML3968)